

proportional to the increase or decrease produced by such rate change in WMU's gross revenues received for water from its other customers." The agreement further specified that the agreed rate will be adjusted after 5 years to the "then current cost of service volumetric rate and adjusted biannually according to cost of service methodology."

On December 1, 2004, WMU submitted proposed tariff sheets in which it established new rates for East Clark District based upon its "outside the city" retail customer rates. These rates were allegedly based upon a cost-of-service study that was prepared in 1999. On December 8, 2005, East Clark District advised the Commission by letter that it did not object to the proposed rates. On December 17, 2004, the Commission, noting the absence of any objection from East Clark District, approved the proposed rates.¹

On August 1, 2005, East Clark District filed a complaint against WMU in which it alleged, inter alia, that: WMU's current rate was excessive, unreasonable and unlawful; WMU's rate did not comport with accepted cost-of-service principles; WMU's rate was based upon a cost-of-service study that did not comport with cost-of-service principles; that WMU's rate forced East Clark District to subsidize retail water service provided to retail customers who reside in Winchester; WMU's imposition of retail rates upon East Clark District violated the provisions of the water purchase agreement; and, WMU refused to provide sufficient water to East Clark District on reasonable terms and conditions. East Clark District requested, inter alia, that the Commission initiate an investigation into WMU's current rate, require WMU to perform a new cost-of-service study, and establish a new wholesale rate for East Clark District.

¹ Case No. 2004-00506, Proposed Adjustment of Wholesale Water Service Rate of Winchester Municipal Utilities (Ky.PSC Dec. 17, 2004).

Following WMU's filing of an Answer to the Complaint, the parties engaged in settlement discussions. On May 30, 2006, they entered into a "Memorandum of Settlement" that resolves all outstanding issues presented in East Clark District's complaint. On June 6, 2006, they executed an amendment to their existing Water Purchase Agreement.

The Memorandum of Settlement provides, inter alia, that:

- WMU may assess a rate of \$1.62 per 100 cubic foot of water to East Clark District based upon the aggregated total of all East Clark District wholesale meters.
- East Clark District may assess WMU a rate of \$1.62 per 100 cubic foot of water (converted to 1,000 gallons) plus 29 percent.
- Each party may assess a fee to recover the Kentucky River Authority Withdrawal Fee assessed to the utilities or their suppliers for water withdrawals from the Kentucky River basin.
- WMU will retain a consultant to conduct a study of the appropriate system development charge, if any, that should be assessed to East Clark District. The parties will accept and abide by this consultant's conclusions. Regardless of the consultant's findings, any system development charge that WMU assesses to East Clark District shall not exceed the charge assessed to WMU's retail customers.
- WMU will increase by 100,000 gallons the amount of water that East Clark District may purchase daily without penalty.
- WMU will increase the amount that East Clark District may purchase from WMU if additional water is available and the requested increase is reasonable in light of other customer demands in WMU's service territory.

The "Second Amendment to Water Purchase Agreement" provides, inter alia, that:

- WMU will increase to 500,000 gallons of water the amount of water that East Clark District may purchase daily without penalty.

- WMU will increase the amount that East Clark District may purchase from WMU if additional water is available and the requested increase is reasonable in light of other customer demands in WMU's service territory.
- WMU's wholesale water service rate to East Clark District shall be \$1.62 per 100 cubic foot of water to East Clark District based upon the aggregated total of all East Clark District wholesale meters.
- WMU's wholesale water service rate may be adjusted biannually according to cost-of-service methodology.
- East Clark District's wholesale rate to WMU will be \$1.62 per 100 cubic foot of water (converted to 1,000 gallons) plus 29 percent and will be adjusted at the same time and in the same proportion as the wholesale rate that East Clark District pays to WMU.
- Each party may assess a fee to recover the Kentucky River Authority Withdrawal Fee assessed to the utilities or their suppliers for water withdrawals from the Kentucky River basin.

On June 12, 2006, WMU filed with the Commission the Second Amendment to the Water Purchase Agreement and a proposed tariff sheet to implement the terms of this amendment. On June 14, 2006, it filed the Memorandum of Settlement. On June 16, 2006, East Clark District moved for approval of the Memorandum of Settlement and the Second Amendment to the Water Purchase Agreement and the rates set forth in those documents. It further moved that the rates set forth in those documents be permitted to become effective on July 6, 2006.

While our review does not indicate that the proposed rates are unreasonable, we find that the agreement fails to provide a specific rate for its Kentucky River Authority Withdrawal Fee. Their agreement and WMU's proposed tariff sheet refer only to "applicable Kentucky River Authority Fee (without markup)." WMU currently assesses East Clark District a fee of \$0.05 per 100 cubic feet to recover the fees that the

Kentucky River Authority assesses for water withdrawals from the Kentucky River and its tributaries.² This fee considers the volume of water drawn from different sources and water line loss that occurs from the intake point to the delivery point.³ The parties have proposed no change to this current rate. WMU proposes, however, that fee be adjusted automatically by the same percentage as any change that the Kentucky River Authority makes in the rate of its fee the first day of the month after such change.⁴

While the use of an automatic adjustment mechanism for the withdrawal fee is appropriate, neither party has provided a detailed formula to calculate the adjustment with great specificity. The percentage formula that WMU proposes does not take into account changing line loss factors, differing levels of adjustment to the Tier I and Tier II rates, and changes in the utility's source of supply. Without such a detailed formula, the Commission finds that WMU's Kentucky River Authority Withdrawal Fee should be established at \$0.05 per 100 cubic foot of water. WMU may submit a more detailed formula for calculating the fee or may revise the fee to reflect any adjusts that the Kentucky River Authority subsequently makes.

The purpose of the Commission's jurisdiction over a municipal utility's wholesale transactions with a public utility is to ensure that any public utility "consumer/customer

² See 420 KAR 1:040 and 1:050.

³ East Clark District's rate schedule currently provides for a separate charge of \$0.067 per 1,000 gallons of water to recover this fee from its ratepayers. See East Clark County Water District Tariff Sheet No. 4 (effective Feb. 21, 2006).

⁴ Electronic mail message from John Rompf, WMU, to Gerald Wuetcher, Deputy General Counsel, Kentucky Public Service Commission (July 27, 2006).

that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service."⁵

In the case at bar, this purpose has been served. The affected public utility voiced its concerns regarding the municipal utility's rates and certain aspects of its provision of service. The municipal utility and public utility have discussed these concerns and have reached an accommodation.⁶ As the proposed Agreement appears on its face to be neither unreasonable nor unconscionable, the Commission sees no need to conduct further proceedings in this matter.

Having considered the motion to approve the agreement and being otherwise sufficiently advised, the Commission finds that motion should be granted and that the agreement's provisions, subject to the revision discussed above, should be approved.⁷

IT IS THEREFORE ORDERED that:

1. East Clark District's motion for approval of the "Memorandum of Settlement" and "Second Amendment to Water Purchase Agreement" and the rates set forth therein is granted.

2. The "Memorandum of Settlement" and "Second Amendment to Water Purchase Agreement" are approved.

⁵ Simpson County Water District v. City of Franklin, 872 S.W.2d 460, 465 (Ky. 1994).

⁶ WMU's proposed wholesale rate represents a decrease over the existing wholesale rate that it assesses to East Clark District.

⁷ Nothing contained in this Order should be construed as Commission approval of WMU's assessment of a system development charge. In the event that WMU's consultant determines the assessment of a system development charge to East Clark District is appropriate and WMU intends to assess such charge, it should apply for Commission approval pursuant to 807 KAR 5:090.

3. WMU is authorized to assess a wholesale water service rate of \$1.62 per 100 cubic feet of water and a Kentucky River Authority Withdrawal Fee of \$0.05 per 100 cubic foot of water for service rendered on and after the date of this Order.

4. The authorized Kentucky River Authority Withdrawal Fee shall be assessed as a separate line item on the bills rendered to East Clark District.

5. East Clark District is authorized to assess to WMU a wholesale water service rate of \$2.80 per 1,000 gallons of water and a Kentucky River Water Authority Withdrawal Fee of \$0.067 per 1,000 gallons of water for service rendered on and after the date of this Order.

6. Within 20 days of the date of this Order, East Clark District and WMU shall file with the Commission revised tariff sheets that reflect the rates approved herein.

7. East Clark District's motion that rates set forth in "Memorandum of Settlement" and "Second Amendment to Water Purchase Agreement" be permitted to become effective on July 6, 2006 is denied as moot.

Done at Frankfort, Kentucky, this 16th day of August, 2006.

By the Commission

ATTEST:



Executive Director